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# IGNOMINIOUS NEUTRALITY

BY PHILIP MARSHALL BROWN

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THE agitation for an embargo on the exportation of munitions of war from the United States is obviously partisan in character, in order to offset the advantage obtained by England and her allies through the control of the seas. It should also be apparent that it would be unneutral on the part of the United States to modify its attitude so completely in the midst of this war. It cannot, indeed, pretend to adopt its attitude to the varying fortunes of war. Nevertheless, the question of the sale of munitions of war by neutral persons to belligerents is of very great interest in the larger questions it raises concerning the nature and obligations of neutrality.

It should be remembered that the United States once complained that "England was the arsenal of the Confederates, from whence they drew their munitions of war, their arms, and their supplies." While it was admitted that neutrals might properly trade in military supplies in the ordinary course of commerce, it was "asserted with confidence that a neutral ought not to permit a belligerent to use the neutral soil as the main, if not the only base of its military supplies, during a long bloody contest, as the soil of Great Britain was used by the insurgents." (Geneva Arbitration).

It will be recalled that during the Franco-Prussian war, Prussia also complained through its Minister to the Court of St. James, Count von Bernstorff, "because the English Government authorized the wholesale forwarding of arms to France, and thus practised a neutrality, not of a benevolent character, but of a character prejudicial to the interests of Germany, although Germany waged a war for a cause which England herself should consider as just."

We now have another Count von Bernstorff, son of the Prussian Minister who presented this complaint to England, in the midst of a war of tremendous significance, presenting

a similiar argument on behalf of Germany, though, curiously enough, there is no attempt to persuade the United States of the justice of Germany's cause.

The essence of this argument is to the effect that "the United States is building up a powerful arms industry in the broadest sense"; that "this industry is actually delivering goods only to the enemies of Germany"; that "if it is the will of the American people that there shall be a true neutrality, the United States will find means of preventing this one-sided supplying of arms."

In view of the clear and entirely convincing manner in which the United States has demonstrated the technical right of neutral merchants to sell munitions of war to belligerents, notably in Secretary Lansing's forceful reply of August 12, 1915, to representations of the Austro-Hungarian Government on this subject, there would seem to be no further need of argument. The technical rights of neutral merchants to engage in this commerce are not questioned, as admitted by Germany in the statement that "The German Government have not in consequence made any charge of a formal breach of neutrality."

The serious question raised is of much wider import. As Germany well says: "It is necessary to take into consideration not only the formal aspect of the case, but also the spirit in which the neutrality is carried out." We are bound to re-examine in a critical spirit the whole problem of neutrality, its fundamental basis, its exact nature, its alleged rights and obligations.

The supplying of munitions of war on a large scale to belligerents vividly suggests some of the extraordinary inconsistencies, the preposterous anomalies involved in any attempt to remain strictly neutral in a great world-war.

Among these anomalies is the fact that while it is generally conceded that a neutral nation may permit private trade in munitions, it is not permissible to sell ships of war. The distinction between arms and ships, the one for ultimate use, the other for proximate use in warfare, is somewhat too refined for ordinary commonsense forms of reasoning, or for what has been well termed "the rough jurisprudence of nations." So likewise is the distinction which permits the exportation of military aeroplanes, or submarines in parts, though forbidding the sale of vessels ultimately destined for warlike use.

Another extraordinary phase of this question is the difficulty of defining munitions of war. As a matter of fact they are not merely arms and ammunition, ships and cannon. As Lorimer truly says: "they are what war demands, whether it is shot and shell, shoes and stockings. . . . All objects are munitions of war if a belligerent is in want of them; and no objects are munitions of war unless, or until, he is in want of them. Salt beef and saltpeter are precisely on the same footing in this respect; and steel bayonets may be a superfluity where steel pens are a desideratum."

If provisions are more urgently required than arms to enable a belligerent to hold out and finally win, a neutral nation must naturally render a greater service by permitting such peaceful traffic than by the sale of ships and guns. The logic of such a situation would impose either a complete prohibition of trade between neutrals and belligerents, or no restrictions whatever.

Consider the matter of enlistment. A neutral nation is bound not to allow belligerents to open recruiting agencies on its territory, but it is not bound to prevent its citizens from giving their services in various capacities to the belligerents. A neutral citizen may contract to provide arms and ammunition, but may not contract to give his own services as a soldier, or engage the services of others.

Take again the question of loans, the supplying of the "sinews of war." They may be made publicly by belligerents on neutral soil; but public subscriptions and collections in their behalf are *unneutral*! Though a public loan may enable a hard-pressed belligerent to continue the war to a successful conclusion, it is quite an innocent commercial transaction, while the subscription is an *unneutral* service!

In all these ways it is permissible for neutral countries to serve as the base of supplies, the "arsenal," the treasure house of money and men, without being technically what Hübner calls either "a party or a judge" in respect to the belligerents.

But there are other anomalous aspects of this weird thing called neutrality. If a neutral nation may permit all these acts, it is still liable to serious interference on the part of belligerents. For example, neutral merchants may engage with impunity in the trade of munitions with a belligerent if their nation is contiguous to his territory, but such trade may be effectively prevented, the contraband confiscated, the

vessel itself condemned, if found on the high seas. Moreover, while theoretically the neutral nation may claim the right to trade freely with the belligerents, it must be prepared to acquiesce in the right of belligerents to institute complete blockades of ports, coasts, or, as would now appear to be the case, the blockade of an entire nation, the establishment of a stupendous siege.

When one considers dispassionately all these anomalies, these incongruities, these absurdities, even, of neutrality, he is constrained to challenge the very basis and nature of that abnormal institution, and to ask whether in a war of far-reaching effects and significance it is possible for any self-respecting nation to maintain a perfect neutrality or remain truly neutral.

The definition of neutrality as "a continuance of a state of peace" between neutrals and belligerents is obviously untrue in the light of the many restrictions which neutrals are bound to permit and the trying obligations they are bound to fulfill.

Neutrality is by no means a normal state of affairs. It is essentially an abnormal relation based on a hideously abnormal state of affairs. War is the negation of law: *inter arma silent leges*. Litigation by force of arms, international disorder, the general disorganization of the community—all this of necessity places belligerents and neutrals in an entirely abnormal situation. As Lorimer soundly observes: "It is necessity alone which can justify either war or neutrality, and necessity is not a source of normal rights and duties."

War and neutrality being essentially abnormal in character, the next fact to be observed is the inevitability of a clash between the interests of belligerents and neutrals. When nations are impelled to stake everything on the battlefield, to make the uttermost sacrifice, they must perforce look upon the interests of indifferent neutrals as of relative unimportance. Prudence, the military exigencies of the situation, as well as a decent consideration for others and for the rights of humanity, will naturally restrain belligerents from interfering as far as possible with neutral nations. But the brute fact still remains that the interests of neutrals, when they clash with the pressing necessities of belligerents in the throes of a tragic struggle, sink into relative insignificance.

It is for these reasons that it is a thankless task to attempt

to define the positive rights of neutrals: they are largely negative in character, varying with the nature of the contest. They are in the main such as the belligerents may choose to concede according to the issues at stake. This is why such a question as the lawful use of submarines is necessarily surrounded with so much uncertainty. This is why it was found necessary to organize the Armed Neutralities of 1780 and 1800 in defence of the alleged rights of neutrals.

The United States had ample opportunity during the Napoleonic wars to learn that the role of a neutral is exceedingly difficult. It will be recalled how England and Napoleon deliberately waged war on each other through neutrals; how skillfully Napoleon manœuvred the United States into war with Great Britain, when, as a matter of fact, we might with as much reason and better justification have gone to war with her enemies.

And now history is repeating itself in a most remarkable manner. The United States finds itself directly and seriously affected by a war of greater magnitude and significance. Its interests are being interfered with by both sides, while one of the belligerents, in imitation of Napoleon's tactics, is avowedly employing drastic measures of retaliation affecting neutral interests in the hope that pressure may be brought to bear on the other belligerent to modify its methods of warfare. The United States is thus again made to realize that neutrals must in some instances either endure considerable interference with their interests or else fight. The maintenance of neutrality under such conditions becomes increasingly difficult or well-nigh impossible.

Thus far we have been mainly considering the rights of neutrals; it is necessary also to bear in mind their obligations.

The general obligation of a neutral is usually defined as non-participation in the contest. It must not allow its territory to be used as a base of operations—the improper use of wireless, for example—nor permit any kind of act which would indicate partiality. A fictitious impartiality which, under the guise of affording equal opportunities to all, really affords special facilities for the only side able to avail itself of the chance, as, for example, the use of French territorial waters by the Russian fleet during the Russo-Japanese war, is obviously not neutrality. The "benevolent" neutrality such as Prussia claimed from England in the Franco-Prus-

sian war, though countenanced in principle by Grotius, is plainly a euphonism for unneutral neutrality.

Anything which renders a neutral nation of special service to a belligerent, particularly as a base of supplies, as an "arsenal"—to employ the term used by the United States in the Geneva Arbitration—is calculated to make it hated by the other belligerent. In other words, that nation which desires to remain neutral may find not only that its alleged rights are seriously violated, but that it is placed under an obligation of impossible vigilance to avoid appearing either as the "benevolent" neutral or the open partisan.

There are those who virtually ask, as does Germany in respect to the sale of munitions, that a neutral nation should alter its procedure and laws so as to redress the balance upset by the varying fortunes of war. This is asking the impossible. It was for this reason that the preamble of the Hague Convention of 1907 concerning the rights and duties of neutral Powers in naval war contained the provision that: "these rules should not in principle be altered, in the course of the war, by a neutral Power, except in a case where experience has shown the necessity for such change for the protection of the rights of that Power."

Taking into account the basis and the nature of neutrality, and the extraordinary difficulties in the way of its effective maintenance, it would appear that the nation which desires to insist on a free exercise of neutral privileges virtually finds itself reduced to the following alternatives.

1. Having no concern with regard to the outcome of the war, it would trade indifferently with both sides, thus aiding them to prolong the fight at its own profit. It cannot serve effectively to help end the contest. As Lorimer pertinently remarks it "cannot strike up the swords of the combatants by putting swords into their hands, money into their pockets, or food into their bellies."

2. By reason of the ability of one belligerent to control the seas, the neutral nation must find itself reduced to the role of supplying only one of the belligerents. Whatever it supplies, whether guns, food, or money, if greatly needed by the belligerent, will necessarily be of the nature of munitions of war. Under such circumstances it will not be strange if the other belligerent quotes reproachfully the words of Demosthenes: "That person whoever he be, who prepares and provides the means of my destruction, he makes war upon me, though he

have never cast a javelin or drawn a bow against me.”

3. If the neutral nation finds that its interests and sympathies are on the side of the belligerent which through the fortunes of war has lost control of the seas, it may find itself in the extraordinary situation of becoming the main support of the very side it desires to see defeated.

4. If, however, its interests and sympathies are with the belligerent which controls the seas, the neutral nation may prefer to permit that side to place restrictions of perhaps a severe and unprecedented character even, on its commercial intercourse with the other belligerent. In this case, if it tolerates, under the thin guise of a benevolent neutrality, technical violations of neutral privileges, it lays itself open to bitter and vigorous protests by the other belligerent against its patent failure to preserve strictly the impartial attitude of a true neutral.

Such, in brief, are the embarrassing alternatives which confront a nation in its efforts to preserve neutrality in the face of a world-wide war vitally affecting its own interests as well as those of the belligerents.

It would seem clear, therefore, in whatever light one regards neutrality, whether from the point of view of the rights of neutrals or of the obligations of neutrals, that during a war of great proportions and significance a neutral nation must necessarily find itself in a most trying position. It cannot possibly escape some of the direct, as well as the incidental hardships of war. When the family of nations is thrown into chaos, all its members must suffer in varying degree.

Under such circumstances, it must again be emphasized, a neutral nation may find itself goaded by its immediate or ultimate best interests to take up arms. It must make certain, however, that it fights for interests of general and fundamental importance, not for technical rights of a temporary, or possibly, doubtful significance. As a responsible member of the family of nations the neutral must be sure it does not follow a policy of unenlightened self-interest or shirk its duty to seek international justice and order. It cannot do this merely by a passive attitude of neutrality. It “cannot strike up the swords of the combatants by putting swords into their hands.”

It would seem clear that under modern conditions of easy intercommunication, of the intimate interdependence of



nations, no great nation can affect a selfish indifference to the interests of other nations, whether in times of peace or times of war. The breakdown of international order must vitally affect every nation. The existence of international injustice, threats of aggression, lust for territory, ambitions to restrict the freedom of others, contempt for the basic principles of international law: all this must arouse any self-respecting nation from a state of callous indifference. The issues of a great war are of too deep significance for the cause of international order and world-peace to permit of real neutrality. As Westlake so forcefully points out:

There is no general duty of maintaining the condition of neutrality. On the contrary, the general duty of every member of society is to promote justice within it, and peace only on the footing of justice, such being the peace which alone is of much value or likely to be durable . . . We may sum up by saying that neutrality is not morally justifiable unless intervention in the war is unlikely to promote justice, or could do so only at a ruinous cost to the neutral.

Lorimer, the great Scotch publicist, also deserves to be quoted in this same sense.

When a question has arisen between two States, and, above all, when that question has led to war, the object of international law is, not to ignore the war, but to remove the cause which has led to it; and this involves giving to the question, not the cheapest and speediest, but the most exhaustive, and, as such, the most permanent solution. There may be cases in which that object may be, or may seem to be, attainable by neutrality or by intervention, indifferently; and in such cases an option between these two courses will, no doubt, be jurally open to the State which is unable to decide between them. But such cases must always be rare; and the acknowledged interdependence of states in our own time tends to render them rarer and rarer . . .

After emphasizing the undoubted tendency of all schemes for international organization and the maintenance of world-peace toward intervention, Lorimer goes on to say:

'Charity begins at home,' and the real interests of his own country must always be the first consideration of the statesman; but to identify a policy of neutrality with the interests of international peace is one of the strangest hallucinations that ever took possession of clear-headed men.

Holding views of this character, it is not strange that Lorimer should find only two grounds of justification for a

nation's remaining neutral: (1) "Involuntary ignorance, or intellectual and consequent moral inability to participate in belligerency"; (2) "Impotence or physical inability to participate in war."

It would seem as if Lorimer's statements were somewhat too sweeping, and fail to take into account localized wars between remote nations not intimately connected with other members of the family of nations, Bolivia and Peru, for example. The neutrality of Sweden in such a case would be fully justified. But on the whole it still remains true that there is an increasing realization of the interdependence of nations which renders their misfortunes and struggles of deep concern to each other. A remarkable manifestation of this tendency is the proposed League to Enforce Peace. Viewed either as a kind of international executive or as a disguised form of alliance, this League is a bold enunciation of the duty of intervention to preserve peace. It is a frank abandonment of the idea of neutrality. It is an admission of the truth of Westlake's assertion that there is no duty of neutrality. It is a recognition of the fact that neutrality is usually humiliating and ignominious.

By way of summary then, the preceding considerations concerning the larger aspects of neutrality raised by the question of the sale of munitions of war by a neutral would seem to warrant the following conclusions.

I. Neutrality, like war itself, is entirely abnormal. It is based on necessity, which, as Lorimer points out, "is not a source of normal rights and duties."

II. Belligerent interests take precedence over neutral interests. If a nation tries to remain neutral it finds it must suffer many restrictions and infringements of the rights of peace.

III. It is impossible for a neutral in the varying fortunes of a war to remain the friend of both belligerents. It cannot alter its course according to the course of the contest. It cannot preserve a perfect neutrality. It cannot observe a "benevolent" neutrality and remain truly neutral.

IV. If a neutral nation does not wish to remain in a humiliating position it must be prepared to fight in behalf of its own best interests.

V. If a neutral nation chooses to fight, it must be certain that it fights on the side of international order and justice.

VI. It is the positive duty of a nation as a member of the

family of nations to actively assist in the maintenance of international order and justice. A neutral nation must necessarily become both a judge and a party in a world-war. Its own best interests require that it should make certain that such a war ends to the advantage of the whole world. Mediation, abstention from intervention, indifferent neutrality, are of slight value or of no value at all. The self-respecting nation, capable of vision and of sacrifice, and willing to play its part as a world-Power, will not shrink from the cost and the dangers of intervention. Ignominious neutrality will be treated with just contempt as the refuge of a timid, selfish people, faithless to their duty as responsible members of the great community of nations.

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